

Assembly Bill No. 1874

Passed the Assembly August 26, 2004

Chief Clerk of the Assembly

Passed the Senate August 24, 2004

Secretary of the Senate

This bill was received by the Governor this _____ day of
_____, 2004, at _____ o'clock __M.

Private Secretary of the Governor

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CHAPTER _____

An act to add Section 14666.9 to the Government Code, and to amend Sections 671.5 and 673 of, and to add Section 679.1 to, the Streets and Highways Code, relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

AB 1874, Cohn. Telecommunications: Information and Advanced Communications Deployment Act of 2004.

Existing law provides that the Department of Transportation shall have full possession and control of the state highways and associated property. Existing law requires the department to approve or deny an application from an applicant for an encroachment permit within 60 days of receiving a completed application that meets specified requirements. Existing law provides that the department's failure to notify an applicant within the required time period that a permit is denied is deemed to constitute approval of the permit. Existing law authorizes an applicant for an encroachment permit to appeal to the director of the department for a final determination of the department's denial of an application. Existing law requires the director to make a final written determination within 60 days after receipt of an applicant's appeal.

This bill would adopt the Information and Advanced Communications Deployment Act of 2004. The act would make it the public policy of the state to, among other things, promote the availability of a wide range of communications services to residents of California and to improve the opportunities for economic development and delivery of communications services. The bill would require the department to approve or deny an application for an encroachment permit from specified telephone or telegraph corporations, and cable television corporations, within 45 days. The bill would also entitle a communications provider to a permit, renewable annually, for the operation, repair, maintenance, or minor alteration of its facilities and service connections that do not require excavation, located or installed in state highways. The bill would authorize the department to revoke the permit under certain conditions.



The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares the following:

(a) It is the intent of the Legislature to promote the accelerated deployment of next-generation broadband networks in California, irrespective of the technological platform used to deploy those services in California, whether through wireless, Internet, cable, satellite, or telecommunications networks.

(b) Information and advanced communications services are the foundations for California's continued technological and economic leadership. It has been estimated that the widespread deployment of information and advanced communications services networks can generate an increase of over \$300 billion in the states' incremental gross domestic product and nearly two million new jobs for the State of California over a 10-year period.

(c) Accelerated deployment of information and advanced communications services infrastructure is a critical component of the state's economic development and an improved quality of life for its constituency.

(d) In order to support the goal of accelerated deployment of information and advanced communications services, state entities should ensure prompt access to public lands by expediting and streamlining rights-of-way access for the deployment of information and advanced communications services infrastructure.

SEC. 2. Section 14666.9 is added to the Government Code, to read:

14666.9. (a) This section shall be known, and may be cited as, the Information and Advanced Communications Deployment Act of 2004.

(b) It is the public policy of the state to do all of the following:

(1) Promote the availability of a wide range of communications services to residents of this state at reasonable cost, including the rapid accelerated deployment of information and advanced communications services networks in the State of California.

(2) Encourage the introduction of new services, the entry of new providers, the development of new technologies, and increase investment in the communications services infrastructure of this state.



(3) Improve the opportunities for economic development and the delivery of communications services.

(c) Nothing in this section alters the rights provided to telegraph or telephone corporations pursuant to Section 7901 of the Public Utilities Code.

SEC. 3. Section 671.5 of the Streets and Highways Code is amended to read:

671.5. (a) The department shall either approve or deny an application from an applicant for an encroachment permit within 60 days of receiving a completed application, as determined by the department. An application for an encroachment permit is complete when all other statutory requirements, including the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), have been complied with. The department's failure to notify the applicant within that 60-day period that the permit is denied shall be deemed to constitute approval of the permit. Thereafter, upon notifying the department, the applicant may act in accordance with its permit application, as if the permit had been approved.

(b) The department shall either approve or deny an application from a telephone or telegraph corporation, as defined in Sections 234 and 236 of the Public Utilities Code, or a cable television corporation, as defined in Section 215.5 of the Public Utilities Code, who is an applicant for an encroachment permit, within 45 days of receiving a completed application, as determined by the department. An application for an encroachment permit is complete when all other statutory requirements, including the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), have been complied with. The department's failure to notify the applicant within that 45-day period that the permit is denied shall be deemed to constitute approval of the permit. Thereafter, upon notifying the department, the applicant may act in accordance with its permit application, as if the permit had been approved.

(c) If the department denies an application for an encroachment permit, it shall, at the time of notifying the applicant of the denial, furnish to the applicant a detailed explanation of the reason for the denial.

(d) The department shall adopt regulations prescribing procedures for an applicant to appeal to the director for a final



determination of the department's denial of an application. The appeal shall be made in writing to the director. There shall be a final written determination by the director within 45 calendar days after receipt of the applicant's written appeal. The adopted regulations shall require the appellant to pay to the department a fee of not more than 50 percent of the estimated administrative cost to the department of conducting the appeal.

(e) Nothing in this section precludes an applicant and the department from mutually agreeing to an extension of any time limit provided by this section.

SEC. 4. Section 673 of the Streets and Highways Code is amended to read:

673. (a) Any permit issued to a permittee of the class specified in Section 678 shall contain a provision that in the event the future improvement of the highway necessitates the relocation or removal of the encroachment the permittee will relocate or remove the same at the permittee's sole expense. In that event, the department shall serve on the permittee its written demand specifying the place of relocation, or that the encroachment is to be removed from the highway, and specifying a reasonable time within which the work of relocation is to be commenced. The permittee shall commence the relocation or removal within the time specified in that demand and thereafter diligently prosecute until completion.

(b) All permits, including those issued pursuant to Section 679.1, but excluding those issued to permittees of the class specified in Section 678 or the class specified in Section 680, are revocable on five days' notice and the encroachment shall be removed or relocated as may be specified by the department in the notice revoking the permit and within the time specified by the department, which time shall not be less than five days, unless the permit so provides.

(c) The department may waive the requirement of subdivision (a) that the permittee bear the sole expense of relocating or removing an encroachment, if the encroachment consists of a track or roadway that serves as an exclusive public mass transit guideway owned, operated, and maintained by a publicly owned mass transit authority.

SEC. 5. Section 679.1 is added to the Streets and Highways Code, to read:



679.1. Any communications provider who receives, or has received, an encroachment permit, is entitled to an annually renewable permit for the operation, repair, maintenance, or minor alteration of its facilities and service connections that do not require excavation, located or installed in state highways. A communications provider with an annually renewable permit shall give notice to the department whenever it accesses its facilities that are located or installed in state highways. The department may revoke the permit if the permittee fails to comply with the provisions of this article, after reasonable notice and an opportunity to cure is provided to the permittee.

SEC. 6. Nothing in this act is intended to affect the outcome of pending litigation between the Department of Transportation and a telecommunication company in *Pacific Bell v. State of California* (United States District Court for the Northern District of California, case number 02-02500 JSW).



Approved _____, 2004

Governor

